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THE INSOLVENCY PROFESSIONAL

YOUR INSIGHT JOURNAL



INSOLVENCY PROFESSIONAL AGENCY OF
INSTITUTE OF COST ACCOUNTANTS OF INDIA

Overview

Insolvency Professional Agency of Institute of Cost Accountants of India (IPA ICAI) is a section 8 company incorporated under the Companies Act 2013 promoted by the Institute of Cost Accountants of India.

We are the frontline regulator registered with Insolvency and Bankruptcy Board of India (IBBI). We are given the responsibility to enroll and regulate Insolvency Professionals (IPs) as its members in accordance with provisions of the Insolvency and Bankruptcy Code 2016, Rules, Regulations and Guidelines issued thereunder and grant membership to persons who fulfill all requirements set out in its byelaws on payment of membership fee.

We are established with a vision of providing quality services and adhere to fair, just and ethical practice in performing its task which doesn't restrict only to enrolling but also to monitoring, training and educating the professionals registered with it.

We constantly endeavor to disseminate information in aspect of Insolvency and Bankruptcy code to Insolvency professionals by conducting Round tables, webinars and sending daily newsletter namely "IBC au courant" which keeps the insolvency professionals updated with the news on Insolvency and bankruptcy code.

In our journey of creating a workforce of Insolvency Professionals, we have recently launched Preparatory educational course that provides skill and knowledge which is required to prepare for Insolvency Professional Examination.

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Insolvency Professional Agency of The Institute of Cost Accountants of India has launched its Monthly Journal "THE INSOLVENCY PROFESSIONAL- Your Insight Journal" in September, 2018. Any views expressed by contributors to the articles are their own and Insolvency Professional Agency of The Institute of Cost Accountants of India does not accept any responsibility. All rights are reserved and no part of the journal may be reproduced or copied in any form by any means without the written permission of Insolvency Professional Agency of The Institute of Cost Accountants of India.

For subscription to the monthly journal and contribution to the articles on subject of interest to Insolvency Professionals in the Journal drop a mail to Ms. Jyotsana Kakkar at: ra@ipaicmai.in

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From the MD & CEO's desk **CMA DR S. K. GUPTA**

We have unlimited human desires and wants and yet we have only scarce resources to meet them. We must therefore have some allocation process of those assets. So, our asset allocation process--what ever it is, this is true of market and planned approaches--is going to have some scarce resources devoted to projects which don't work out. What we need therefore is a system by which we can pluck those scarce resources out of the inefficient usage and reallocate them, possibly more productively this time. That's what, in general terms, we call the bankruptcy process.

IBC – a game changer

Insolvency & Bankruptcy Code is formulated to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner

for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders

IBC score card

India's bad account market is turning good. Investors are upbeat and banks are also looking for alliances to start funds. Huge amount of money from global and domestic capital market is being pumped-in in stressed assets market in India. Big assets undergoing Corporate Insolvency Restructuring Process (CIRP) under Insolvency and Bankruptcy Code, 2016 (IBC) are hot targets. Funds are hoping for big in next round of big tickets cases which might end up before National Company Law Tribunal (NCLT)

According to a recent report of debtwire asia, The National Company Law Tribunal (NCLT) has sanctioned 45 resolution plans almost two years after the first set of insolvent corporates were taken for proceedings under the Insolvency and Bankruptcy Code (IBC), according to a report by Debtwire Asia. Further, the NCLT has ordered for the liquidation of 19 companies since proceedings under the IBC officially began at the end of December 2016.

Of these resolution plans, at least 12 are being implemented while four are being contested at the National Company Law Appellate Tribunal (NCLAT). The report analysed the resolution plans for 27 cases and found that on average the cash recovery rate for lenders was 41.16 per cent, given that financial creditors are to receive a total of Rs 498.99 billion in claims.

In the case of the Dirty Dozen, the average cash recovery for the financial creditors of Bhushan Steel stands at 46.2 per cent on (total financial claims worth Rs 560.22 billion). While in the case of Electrosteel Steel, the cash recovery for lenders stands at 40 per cent (Rs 131.8 billion), followed by Amtek Auto at 26 per cent (Rs 126.05 billion) and Monnet Ispat at 22 per cent (Rs 110.15 billion). According to the Insolvency and Bankruptcy Board of India (IBBI) only seven cases saw financial creditors receive 100 per cent of their dues, which was pegged at Rs 1.45 billion, for the seven companies.

Further, the report found that the NCLT on average took 275 days to approve a resolution plan from the time the corporate debtor was admitted under the Corporate Insolvency Resolution Process (CIRP) of the IBC. For the larger cases, the NCLT on average took 306 days to approve of the resolution plan(s), which indicates that the time-line prescribed in the IBC has not been adhered to, in the strictest sense. Out of the 45 resolution plans that have been accepted by the NCLT, as of date, around 26 cases took longer than the prescribed 270 days. While the CIRP for only 4 cases were completed within the original 180 day time-line.

While IBC's initial progress was slow, it has seen significant traction in the last few months. The performance evaluation of the code has to be a "relative evaluation" given that there was nothing on the ground prior to its implementation. The "litmus test" has been passed given that as much as 270 per cent of the "liquidation value" has been received in the 32 cases that were resolved. We can't distort things. How do you expect 100 per cent recovery? There is no magic wand. In a bad loan situation, even if you get back the principal, it is a big achievement.

The way forward

IBC should be seen as a legislation focused on 'resolution' and not one intended for 'recovery'. The implementation of insolvency and bankruptcy code (IBC) process will be one of the key determinants of growth in the financial year 2018-19. If this process moves ahead expeditiously, stressed firms will be put in the hands of stronger ownership, allowing them to resume spending. However, if resolution is delayed, private capex cycle will also be disrupted, leading to impacting public investment.

India's bad account market is turning good. Investors are upbeat and banks are also looking for alliances to start funds. Huge amount of money from global and domestic capital market is being pumped-in in stressed assets market in India. Big assets undergoing Corporate Insolvency Restructuring Process (CIRP) under Insolvency and Bankruptcy Code, 2016 (IBC) are hot targets. Funds are hoping for big in next round of big tickets cases which might end up before National Company Law Tribunal (NCLT). Though it is true that there are various gaps which need to be filled and various practical difficulties which need to be addressed under IBC, it has so far proved to be effective in meeting its purpose. As this law evolves, it is likely to further boost India Inc's corporate governance practices and help the country optimally address the widespread problem of mounting corporate debt.

IBC remains an epitome of benchmarks and learnings at the same time.

Happy reading !

Dr. S K Gupta

PROFESSIONAL DEVELOPMENT INITIATIVES

INITIATIVES IN THE MONTH OF OCTOBER, 2018:

- ✓ Pre- registration Educational Course on 1st October, 2018 in Kolkata.
- ✓ National Conference on Insolvency and Bankruptcy Code, 2016 in association with ASSOCHAM at Chennai on 4th October, 2018.
- ✓ Roundtable Interaction on Resolution Strategies for Distressed Assets on 5th October, 2018.
- ✓ Webinar on Bankers perspective on IBC, 2016 on 9th October, 2018.
- ✓ Preparatory Educational Course for Limited Insolvency Examination" w.e.f 13th October, 2018 in New Delhi
- ✓ Webinar on Practical aspects of IBC, 2016 on 16th October, 2018.
- ✓ Presentation on Information Management System (IP Module) for Insolvency Professionals" on 17.10.2018.

Key Speakers for the Roundtables & Workshops conducted:

Mr. Chirag Mehta, Founder & Partner at Clip Financial - Roundtable discussion on Resolution Strategies for Distressed Assets on 5th October, 2018.

Mr. S. Raman (Managing Director, NeSL) and Mr. P Sankar (Vice President, NeSL)- For presentation on Information Management System (IP Module) for Insolvency Professionals on 17th October, 2018.

Speakers for the Webinars:

Mr. Deepak Maini, Insolvency Professional & Ex GM- Punjab & Sind Bank -Webinar on Bankers perspective on IBC, 2016 on 9th October, 2018

Mr. J.K. Budhiraja, Insolvency Professional & Ex CEO- IPA ICMAI Webinar on Practical aspects of IBC, 2016 on 16th October, 2018

INITIATIVES IN THE MONTH OF NOVEMBER, 2018

Round Table Interaction on “Issues in CIRP and Liquidation” at Kolkata to be addressed by Dr. Navrang Saini (Whole Time Director, IBBI) on 2nd November, 2018.

Round table discussion on 9th November from 6.00 pm - 8.00 p.m. on "Regulation on Bankruptcy Process for Personal Guarantors" at Kolkata presided by Dr. M.S Sahoo (Chairperson of IBBI).

Associate partner in Corporate Insolvency Law Practicum organized by National Law University on 14th – 15th November, 2018

Pre- registration education course at Hyderabad from 25th November, 2018, jointly by three IPAs.

Pre-Registration Training for Insolvency professionals at Mumbai from 29th November, 2018.

Insolvency Professionals Conclave at Hyderabad to be addressed by Chairperson IBBI, Secretary MCA, President NCLT on 1st December, 2018.



Pre- registration Educational Course on 1st October, 2018 in Kolkata



Roundtable Interaction on Resolution Strategies for Distressed Assets by Mr. Chirag Mehta, Founder & Partner at Clip Financial on 5th October, 2018



Presentation on Information Management System (IP Module) for Insolvency Professionals" on 17.10.2018 by Mr. P Sankar (Vice President, NeSL) & Mr. S. Raman (Managing Director, NeSL)



Presentation on Information Management System (IP Module) in the presence of IBBI Officials and CEOs of all the three Insolvency Professional Agencies.

A close-up photograph of a person's hand holding a pen and writing on a document. The background is blurred, showing another person's hand and a laptop. Large white circles are overlaid on the image. The word 'ARTICLES' is written in large, bold, white capital letters across the center of the image.

ARTICLES



SUSTAINABLE RESOLUTION PLANS VIS-À-VIS PROVISIONS IN IBC



CMA George Samuel
Cost Accountant and Insolvency Professional

Should resolution plans be made sustainable? Do sustainability concepts have relevance when modeling resolution plans and if yes, should it be predominantly placed in each step of the resolution plan being thought of or should it be just a factor only for theoretical or ornamental importance. These questions are relevant because unsustainable ways of doing business caused the insolvency and any myopic approach to resolution will only tend to queue up for the next list of insolvent entities, perhaps a decade

later, if not in the immediate future. Business Insolvency is a calamity, of some sort, gradually built up over the years due to one or many of unsustainable practices of the past which burst when no longer the business could withstand the impacts. If this is so, how sustainability can be built in the resolution plans, of course, within the ambit of the IBC, 2016 and Regulations thereto? The resolution professional has a great role to play; the Committee of Creditors (CoC) too have.

We are talking about a situation where insolvency, fait already accomplished; distress happened. It is said that in distresses there are great chances to bounce back to full glory, if such and such things happen. Let us then examine what these factors are and whether in the IBC, 2016 and Regulations, these factors are taken care of.

Section 25 of IBC deals with the duties of the resolution professional (RP). Sub-section (1) states, "It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor." One can take this duty of RP for a short-period perspective, say for the period during the corporate insolvency resolution process (CIRP) of 180 or 270 days, as the case may be. On the other hand, the duty to protect the assets during continued business operation of the corporate debtor (CD) can be thought of as the visionary responsibility expected from the RP, that the RP's action in the CIRP should result into meaningful resolution plans that will take care of the continued business operations for a long-long time ahead.

It is in the performance of this responsibility that Section 25 (2) (h) is framed, as it appears. The subsection (2)

reads, "For the purpose of sub-section (1), the resolution professional shall undertake the following, namely – (h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans;"

Towards a sustainable resolution plan, laying down criteria by the resolution professional with the approval of CoC will be the first step. If sustainable criteria are laid down, sustainable resolution plan will result, else, it will just be a purchase and sale transaction in the garb of resolution plan. Although along with the resolution professional, the CoC members too are involved, it is quite often the ingenuity of the RP that matters, he is better placed to guide the CoC towards the selection of a sustainable business criteria. Economic considerations are essentials to revive and resolve; quintessential, however, are the meeting of social, environmental and governance criteria by the resolution applicants during the continued business operation of the CD. Needless to say, the legal criteria, of ineligibility as stated in

Section 29A are mandatory and shall not be lost sight of in the process of exploring the possibilities for a sustainable resolution plan.

Let us now examine the responsibility of the RP as to what a resolution plan should contain; the mandatory responsibilities are provided in Section 30 (2) read with Regulations 37 and 38, which we shall examine.

Section 30 (2) of the IBC, 2016 lists down the essential characteristics of a resolution plan; the Sub-section (2) reads as follows:

“The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) The implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) confirms to such other requirements as may be specified by the Board.”

In the above sub-section, clause (a) deals with payment of CIRP Costs and clause (b) ensures a minimum payment to one class of stake-holder of the CD, that is, operational creditors. Clause (e) and (f) deal with the legal conformance of resolution plans. It is in clause (c) and (d) that the provisioning of the management and supervision of the resolution plan during the continuance of business operations is made. Especially in case of resolution plans of small and medium sized companies it is not uncommon to see a one-sentence commitment against the clauses (c) and (d); against clause (c), it will be like “the management of resolution applicant will take over the management of CD” and against (d), “so and so is identified for the supervision”. The management and supervision of the CD is so casually taken; as if the management

and supervision are just a child play in the resolution plan. The Management and Supervision are two very important criteria, post approval of the resolution plan and the RPs have an important role in ensuring that these requisites are sufficiently provided for the continuity of the business operation without any loss in the value to the properties.

Regulation 37 provides for the different measures and states,

“A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following:-

- (a) transfer of all or part of the assets of the corporate debtor to one or more persons;*
- (b) sale of all or part of the assets whether subject to any security interest or not;*
- (c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;*
- (ca) cancellation or delisting of any shares of the corporate debtor, if applicable;*
- (d) satisfaction or modification of any security interest;*
- (e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;*

(f) reduction in the amount payable to the creditors;

(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;

(h) amendment of the constitutional documents of the corporate debtor;

(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;

(j) change in portfolio of goods or services produced or rendered by the corporate debtor;

(k) change in technology used by the corporate debtor; and

(l) obtaining necessary approvals from the Central and State Governments and other authorities.”

The clauses (a) to (l) including the newly inserted clause (ca), do not contain any sustainability components other than some of the economic elements of sustainability. Except a couple of measures, all the measures are short-term financial measures. Sustainability planning is meaningful in a long-term context only and involves, besides techno-economic viability, social and environmental aspects as well. Needless to mention here that the resolution plans must go beyond a credit

monitoring arrangement (CMA) statements followed by banks.

Regulation 38 provides for the mandatory contents of the resolution plans which reads as follows:

Reg. 38 (1) A resolution plan shall identify specific sources of funds that will be used to pay the -

(a) insolvency resolution process costs and provide that the insolvency resolution process costs, to the extent unpaid, will be paid in priority to any other creditor;

(b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and

(c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.

Reg. 38 (1A): A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.

Reg. 38 (2): A resolution plan shall provide:

(a) the term of the plan and its implementation schedule;

(b) the management and control of the business of the corporate debtor during its term; and

(c) adequate means for supervising its implementation.

Reg. 38 (3): A resolution plan shall demonstrate that –

(a) it addresses the cause of default;

(b) it is feasible and viable;

(c) it has provisions for its effective implementation;

(d) it has provisions for approvals required and the timeline for the same; and

(e) the resolution applicant has the capability to implement the resolution plan.]

Sub-regulation (1) of Regulation 38 deals with the financial perspectives, deals with the identification of source of funds for payment of present liabilities to the existing stakeholders and does not deal with the future. Sub-regulation (1A) deals with a statement as to how the plan has dealt with the interests of all stakeholders. A tendency seen is to consider Sub-regulation (1A) also in a financial

perspective only as to how much will be paid to whom and what is the hair-cut. A broader approach would be to consider how the interest, present and the future, of all the stakeholders including the workers, customers, suppliers, society and the shareholders will be taken care of during the continued existence of the entity.

In the newly substituted Regulation 38 (3) made effective from 04-07-2018, a sustainability resolution model for the business entity can be seen as amply attempted, albeit indirectly. Sub-Regulation 38 (3) is wide enough that the RP in his responsibility to submit all resolution plans which comply with the requirements of the Code and Regulations made thereunder, shall ensure that all resolution plans addresses the cause of default leading to the insolvency and that the plan submitted is feasible and viable. Further he has to ensure that the plans have provisions for effective implementation.

The finding of the causes of default are not so simplistic; it is complex and a result of conglomerate of actions, which may be related to strategic plan failures, management control failures or it could be the lack of these essentials. It could also be due to fraudulent transactions, or corporate governance was lacking, or business governance is not at all practiced. It could also be strikes, lockouts and closure due to non-compliances, it could be also due to changes in State policies, et al.

The author is not trying to establish a utopian situation which is more than impossible particularly in a business scenario. Nevertheless, an attempt towards a sustainable resolution plan will sure lead us towards a better world.

Obviously, the Management Accountant has a great role as Resolution Professional; he shall, however, should not restrict himself and go beyond his tag as Accountant to Manager and a responsible Human being.

ROLE OF INTERIM RESOLUTION PROFESSIONAL



Prakash Nath Mishra
Insolvency Professional

IRP - Appointment

Where any corporate debtor commits a default of / or above rupees one lakh, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process, in respect of such corporate debtor in the manner as provided under the Insolvency and Bankruptcy Code, 2016. It is mandatory for the financial creditor (FC) and corporate debtor (CD) to provide the information relating to the resolution proposed to be appointed as an interim

resolution professional (IRP) along with application. Operational creditor (OC) may propose a resolution professional along with the application, in absence of such proposal by OC the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional. The guideline issued on 31st May, 2018 on “Insolvency Professionals to act as Interim Resolution Professionals or Liquidators (Recommendation) Guidelines, 2018” provides for the IBBI to prepare a panel of

IPs for appointment as IRP and share the said panel with AA. The AA may pick up any name from the panel for appointment of IRP for a CIRP. The Panel will have Bench wise list of IPs based on the registered office of the IP. It will have a validity of six months and a new panel will replace the earlier panel every six months.

IRP-Tenure

The tenure of the interim resolution professional was not to exceed 30 days from his appointment earlier but effective from 6th June 2018, IRP shall continue till the date of appointment of the resolution professional under section 22. The section 22 of the code provides that committee of creditors, in the first meeting shall either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another insolvency professional by a majority vote of sixty-six percent or more. Effectively the tenure of IRP shall end with the event of appointment of the RP to the particular assignment of CIRP.

IRP – Role

The activities to be conducted by IRP is multifaceted and has to commensurate to the scale of operations, complexity of the

activities and intricacies involved in the operations of the Corporate Debtor. IRP need to maintain integrity, independence, impartiality and professional competence in the process. IRP has to embrace the changes in legal framework as provided by the regulators which includes IBBI, IPA, and NCLT among others. Along with appointment as IRP, all the powers of the management rest with the IRP and he shall strive to keep the business of the corporate debtor as going concern. IRP shall be responsible for complying with the requirement of all the applicable law for the time being in force on behalf of the corporate debtor. The role of IRP is to take the CIRP process to the stage of constituting a committee of creditors by receiving, collating and validating (to the extent it is possible at that stage) the claims submitted by creditors. The constitution of Committee of Creditor and conducting first meeting of such committee virtually brings the end of the role as IRP, thereafter the IRP may be confirmed as Resolution Professional or replaced by another Resolution Professional by the committee of creditors and the role of RP begins therefrom. The IRP has to pass on all the information and documents to the RP (if replaced), maintain the records with IRP

for 3 years, forward all records to IBBI [section 31(3)(b)] and copy of the records of every proceeding before the Adjudicating Authority to the IBBI and insolvency professional agency of which he is a member [Section 208(2)(d)].

Section wise specific Role to be performed by IRP

1. Enabling activities related to Moratorium u/s 14
2. Public announcement of corporate insolvency resolution process. u/s 15
3. Management of affairs of corporate debtor u/s 17
4. Duties of interim resolution professional u/s 18
5. Ensuring Personnel to extend co-operation to IRP u/s 19
6. Management of operations of corporate debtor as going concern u/s 20
7. Appointment of Authorised representatives' u/s 21
8. Enabling Appointment of resolution professional by CoC u/s 22
9. Conducting Meeting of committee of creditors u/s 24

10. Duties of resolution professional u/s 25.

It is important to note that this list is not exhaustive and don't attempts to draw any distinction between role of IRP and RP. Both the role share common responsibilities and duties, it is overlapping to certain extent and can be interchangeable depending on the circumstances for their respective role. Appropriate intellect and professional competence is to be exercised to ensure that each act complement and works as enabler for the next level in the entire CIRP process. The specific roles and responsibility is provided in detailed manner in respective sections as mentioned above to be read along with Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Below are some of the indicative activities and checklist which may be helpful for an IRP to effectively execute his duties in accordance with the stated law in practice.

1) **SETTING UP THE BACKGROUND:** There can be plenty of information which can be searched online to have an overview about the Corporate Debtor. Details of director /partner of debtor and their scale

of operation, geographic spread, type of operation, and registered charges etcetera are some of such publically available information. It can be accessed from CD's website and other portals and shall be useful to assess the areas of challenge and level of statutory compliance of CD to a larger extent. IRP can also prepare himself even before the actual CIRP process begins, with awareness on the issues, likely to be encountered in the process. To establish his identity as IRP the copy of the order is required by IRP. This can be accessed from the NCLT through the legal counsel of the applicant, NCLT portal or requesting directly to the NCLT office.

2) ACCESS TO BOOKS/DOCUMENTS: The previous step will broadly describe the type of documents IRP will need from CD at the earliest possibility, the indicative list given below will help IRP to prepare his own tailor-made checklist of such documents and information specific to each assignment.

List of Documents may be required by IRP from Corporate Debtor

a) Names, address, email, contact number of all directors, key managerial persons, registered office, corporate office, branches and other units of operation.

b) Shareholders/ Members with 1% or more shareholders list.

c) Registration numbers of the corporate debtor related to ROC, PAN, TAN, and other regulating authorities such as SEBI, CBEC jurisdiction, GST, VAT, RBI, TRAI, ESI, PF, PCB, IEC, Insurance etcetera as applicable to entity.

d) Workforce strength of CD including staff, workers, employees and other personnel such as security agency, IT service provider as applicable.

e) List of subsidiary and associates with stake therein

f) Brief note and related documents related lawsuits which the Debtor was a party within the last 2 years.

g) Brief note and documents related to material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities, suit or arbitration proceeding ongoing for the CD.

h) List of all bank accounts, credit arrangements with banks and other financial institutions.

i) Audited financial statement, annual reports, Cost Audit reports, Internal audit

reports, tax returns and audit reports for at least preceding 2 financial years.

j) Access to passwords, codes to access the financials records, books and records of the Debtor for the last 2 years, such as accounts payable, accounts receivable, payroll records, and bank records and bank statements etcetera.

k) Status as of CIRP initiation date for all assets and liabilities, tangible assets with location address, intangible assets with appropriate details like registration, expiry, market value etcetera. The fixed asset register details may provide details such as acquisition date, acquisition value, improvements, expected life, depreciated value etcetera.

l) Details of investments in securities including shares held in any subsidiary of the corporate debtor, financial instruments

m) Brief note and documents on all leases, rentals and long term contracts to which Debtor has been a party within the last two years.

n) Brief note and documents relating to any loss of assets, related claims, police reports, insurance and complaints arising to or from the corporate debtor and settlement documentation of past 2 years.

o) Brief note with documents of security interest created on any of assets with detailing names, addresses of creditors detailing the rights of preference (pledge, mortgage, other guarantee).

p) Brief note and documents of arrangement of loans and finances, guarantees that have been given in relation to the debts of the corporate debtor by other persons, guarantees, if any, given by corporate debtor.

q) Brief note on related party transactions, outstanding debt to related parties.

r) Brief note and relevant information on operations / production flow charts, suppliers, customers, service providers. The focus is to be established on grey areas where the disruption of the business as going concern may occur if not addressed promptly.

3) INITIAL BRIEFING: The first meeting with the directors and key managerial personnel of the corporate debtor shall pave the path for his future interaction and rapport for the IRP. There cannot be predefine narrative for IRP to deliver for the occasion, being polite and assertive about his role, duties and authorities as provided within legal framework for the

CIRP process will help. Providing broader perspective of the resolution process and objective of the legislation will inculcate trust and encourage greater participation with the IRP for the assignment and most desired support for the assignment.

4) COMPLIANCE AND TIME SCHEDULE:

The CIRP itself has a stricter and

non compromising time schedule for each of the stakeholder in entire process.

IRP being operating from the center of the process has to do multiple activities and also has onerous responsibility to keep all stakeholders informed about his activities and also remain abreast with actions and expectations of other stakeholders in the process.

REPORTING REQUIREMENTS OF AN INSOLVENCY PROFESSIONAL UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016



CS Anchal Jindal
Monitoring and Compliance Officer
of IPA ICAI

Prologue

Insolvency Professionals (IPs) are one of the key stanchions under the Insolvency and Bankruptcy Code, 2016 (“Code”). They play a pivotal role in the effective, efficient and successful implementation of the Code. They act as a bridge between stakeholders (creditors, debtors, employees, government etc.) and Adjudicating Authorities. An Insolvency Practitioner is not only a professional who works towards revival and resolution of the

will only tend to queue up for the next list of insolvent entities, perhaps a decade Company but apart from this job has a wide array of responsibilities to play as well. Being a trustee of the Corporate Debtor, an IP is also an officer of the Court who act as an extended arm of the Adjudicating Authority and also acts in fiduciary capacity to a Corporate Debtor.

Where on one hand Code offers versatile opportunities to a professional to work as an Interim Resolution Professional or Resolution Professional or Liquidator or Authorised Representative or to represent any class of creditors under the Code; simultaneously Code also tosses

enormous responsibilities on the shoulders of the IPs.

Sub-Section 2 of Section 208 of the Code postulates that every IP shall abide by the

following code of conduct:

Clause	Provision	Explanation
A	To take reasonable care and diligence while performing his duties.	Before taking up any assignment under the Code, an IP should carry out proper checks and due diligence. An IP should formulate proper checklists with the timelines for every event and duties to be performed in that particular event in order to avoid any lapse while performing the job. An IP shall be well versed with the knowledge of the actions to be taken by him/her pre assignment, during assignment and after assignment.
B	To comply with all requirements and terms and conditions specified in the bye laws of the insolvency professional agency of which he is a member.	An IP should at every time abide by the provisions of the bye-laws of the respective Insolvency Professional Agency (IPA) with whom he/she is registered. Bye Laws of every IPA are accessible on their respective website. Bye-Laws encompass provisions with regards to the membership and monitoring of IPs, grievance handling procedure, surrender of registration by an IP, disciplinary mechanism etc. to be obeyed by an IPA.
C	To allow the insolvency professional agency to inspect his records;	IPAs are also one of the crucial pillars of the Code. They are the frontline regulators who are entrusted with the responsibility of monitoring the performance of the IPs. Inspection of an IP or of its records can be one of the outcome of the monitoring carried out by an IPA depending upon case to case. An IP shall cooperate with its respective IPA in providing the information pertaining to the assignments as and when required and shall also provide assistance and necessary cooperation if inspection has been conducted by the respective IPA at its premises.
D	To submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member.	One of the most important duty of an IP is to submit the copy of the records of every proceeding pertaining to an assignment before Adjudicating Authority to Insolvency and Bankruptcy Board of India (Board) and to the respective IPA (in accordance with their monitoring policy) of which he is a member. The term "proceeding" is not yet defined under the Code. But as per the developed practices, an IP shall submit copy of petition filed before Adjudicating Authority, copy of order(s) (interim/final), public announcement, interlocutory or miscellaneous applications filed, documents pertaining to the meeting of Committee of Creditors, various reports filed before Tribunal/Courts etc. Till the time particular formats or utilities are not developed for submission of records, the abovementioned documents can be submitted via mail to the designated e-mail id of the Board and IPA.
e	To perform his functions in such manner and subject to such conditions as may be satisfied.	To perform such other functions as may be notified by Board or IPA from time to time. For eg: Compliance with various Circulars issued by Board till date.

Provisions Pertaining To Reporting and Records Maintenance Mandates By an Ip Under The Code

- As per Section 208 (2)(d) of the Code, every IP shall submit a copy of the records of every proceeding before the Adjudicating Authority to the Insolvency and Bankruptcy Board of India (IBBI) as well as to the Insolvency Professional Agency of which he is a member.
- As per Clause 16 of the Schedule prescribed under IBBI (Model Bye-Laws & Governing Board of Insolvency Professional Agencies) Regulations, 2016; a professional member shall submit information, including records of ongoing and concluded engagements as an IP, in the manner and format specified by the respective Insolvency Professional Agency at least twice a year.
- An IP shall abide by the Monitoring Policy adopted by the IPA with whom an IP is registered and shall make timely reporting in accordance with the policy.
- An IP shall maintain and preserve complete and proper record of all the assignments (corporate

insolvency resolution process/ voluntary liquidation/ liquidation) handled by them. Board in consultation with IPAs will soon notify the retention schedule of records by an IP. The reference of the same has been given under Regulation 39A notified via Insolvency and Bankruptcy Board of India (insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2018.

- An IP who acted as a liquidator shall preserve the reports, minutes, registers and books of account of the corporate person after its dissolution for atleast 8 years either with themselves or with an Information Utility.
- Pursuant to Clause 22 of the First Schedule of IBBI (Insolvency Professional) Regulations, 2016; an IP must refrain from accepting too many assignments, if he is unlikely to be able to devote adequate time to each of the assignment.

Reporting Pursuant To the Circulars Issued By Board

Till date Board has released 19 Circulars, out of which following 4 circulars requires reporting by an IP to Board or to the IPA as the case may be.

The circulars issued by the Board can be accessed at ibbi.gov.in under the head “Legal Framework” and sub-head “Circulars”.

S.No.		Circular	Explanation
1		Compliance of Regulation 13 (2) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (Dated 31st August, 2018)	Every Insolvency Professional Entity (IPE) shall inform to IBBI within seven days from the date when an IP ceases to be its director or partner or joins as its partner or director in the format provided in the Annexure of the Circular from the email address of the IPE registered with the IBBI to ipe@ibbi.gov.in . Failure to comply with the said requirement shall invite appropriate action, including withdrawal of recognition granted to an IPE.
2		Fee and other Expenses incurred for Corporate Insolvency Resolution Process (Dated 12th June, 2018)	Every IP who acted as an Interim Resolution Professional/Resolution Professional shall give disclosures with regard to the fees charged and expenses incurred by them while conducting corporate insolvency resolution process within 7 days from the date of demitting their office. IPs shall file the abovementioned disclosure on the Online Utility developed by their respective IPAs on their website.
3		Designated website for publishing Forms under the Regulations. (Dated 23rd February, 2018)	Under this Circular, Board has provided the format and designated e-mail ids on which reporting is to be made by an IP as an Interim Resolution Professional/Resolution Professional/ Liquidator in the event of public announcement and invitation of resolution plans.
4		Disclosures by Insolvency Professionals and other professionals appointed by Insolvency Professionals conducting Resolution Process (Dated 16th January, 2018)	As per this Circular, every IP handling any corporate insolvency resolution process assignment and professionals appointed by an IP shall disclose the relationship as follows and within specified timelines (refer Table 1). ^[1] IPs shall file the abovementioned disclosure on the Online Utility developed by their respective IPAs on their website.

* Table 1:

Relationship of IP /other professional with	Disclosure to be made within 3 days of
The Insolvency Professional (applicable only in case of disclosure of relationship by professional appointed by IP)	The appointment of the other Professional.
Corporate Debtor	The appointment of IP / other Professional.
Financial Creditor(s)	Constitution of Committee of Creditors.
Interim Finance Provider(s)	The agreement with the Interim Finance Provider (in case of IP). The agreement with the Interim Finance Provider or three days of the appointment of the other Professional, whichever is later (in case of other professional).
Prospective Resolution Applicant(s)	The supply of information memorandum to the Prospective Resolution Applicant (in case of IP). The supply of information memorandum to the Prospective Resolution Applicant or three days of the appointment of the other Professional, whichever is later (in case of other professional).
If relationship with any of the above comes to notice or arises subsequently	Of such notice or arising

NEED FOR REPORTING BY THE Ips

Reporting of information by an IP is not a one-fold process rather a two-fold process because as soon as an IP reports any information to the Regulator it casts responsibility upon the regulator to monitor and analyze the information in accordance with the statutory provisions. Observations or non-compliance if any observed during monitoring is intimated to the concerned IP in order to prevent

monitoring of their performance by the regulators but is also one of an important source to draw various critical analysis from the same.



The analysis of data provides sufficient information to the regulators to keep a check on the movement of the Code and also to develop best insolvency practices from time to time. It also enables regulators to keep a check on malpractices (if any) being followed in the profession of insolvency practitioners and to put a halt on such practices at the earliest.

Since the Code is evolving and to make its success rate higher in near future, it is imperative that all the players under the Code play their respective part in best possible manner which in turn will result in making India a better and improved jurisdiction for dealing with insolvency and bankruptcy matters.



PRACTICUS QUESTE

How will the Insolvency and Bankruptcy Code create confidence in investors to put money in corporate bonds?

The bond market investors such as Mutual Funds and pension funds hold bonds to maturity, and have limited information about the paper unlike a bank, which does much more due diligence. Their concern is that if the asset defaults or goes into trouble, the bond market investor typically does not get the money back. So, they largely prefer to invest in AAA or AA-rated companies. IBC creates a resolution mechanism for stressed assets, within a definite time frame. This would create confidence in investors to put money in Corporate Bonds.

Can the Adjudicating Authority ask the Committee of Creditors to consider a revised bid made post bidding process?

The Adjudicating authority may consider a revised bid by a bidder who had earlier made a lower bid at the initial bidding stage. However, notably the same cannot be generalised and is subject to the satisfaction of the Adjudicating authority, committee of creditors and other stakeholders and subject to matching up with the initial bid.

Can the employees of the Corporate Debtor challenge the Resolution Plan submitted by the highest bidder post bidding process?

Employees cannot challenge the Resolution Plan post bidding process provided the Resolution Plan caters to the interest of the employees and is not in contravention of provisions of the IBC.

Can Insolvency professional take control of the assets in a subsidiary of the borrower?

The insolvency professional cannot take control over the assets of a subsidiary of the borrower. As per section 18 of the code it is one of the key responsibilities of the insolvency professional to take control and custody of the assets of the borrower and with respect to the subsidiary the insolvency professional can only act in the capacity of a shareholder.

Does a Trustee registered under Companies Act, 2013 comes within definition of financial creditor under Insolvency and Bankruptcy Code?

In a case of T.R. Jawahar v. Edelweiss Asset (2017) it was found that respondent- trustee was a company registered under the Companies Act, 1956 and came within definition of the financial creditor as defined under section 5(7) and (8).



JUDICIAL DECLARATION



Relevant Judicial Pronouncements in the Month of September, 2018- Resolution and Liquidation

Bench: **National Company Law Tribunal Kolkata Bench, Kolkata**

Corporate Debtor: **M/s. Techno Fab Manufacturing Limited**

Financial Creditor: **Jai Prakash Overseas Finance Limited**

Amount of Debt: **Rs. 5.20 Lakhs Approx**

Date of Order: **05-09-2018**

Relevant Section: **Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016- Initiation of Corporate Insolvency resolution process by Financial Creditor**

- ❖ Application was filed by the financial creditor for initiation of Corporate Insolvency Resolution Process against Corporate Debtor.
- ❖ Interim Resolution Professional appointed was Mr. Hrisikesh Dasgupta. He was later appointed as the resolution professional.
- ❖ Among various objections raised by the corporate debtor, one of the main contention was that the financial creditor did not send the notice prior to filing the application and thereby violated principal of natural justice. Which was denied by the court by stating that the application was filed under section 7 of the Insolvency and bankruptcy code and not under section 9 of the Code. Issuance of a demand notice in a case under section 7 of the Code was not at all a pre requisite to maintain the application.
- ❖ According to the records, resolution professional called from the prospective applicants the Expression of Interest and resolution plans but did not get any resolution plan within the period of 180 days of CIRP. Also, Committee of creditors did not wish to further extend the period of CIRP beyond 180 days.
- ❖ Order was then passed to liquidate M/s Techno Fab Manufacturing Limited and appoint Mr. Hrisikesh Dasgupta as the liquidator.



Bench: **National Company Law Tribunal New Delhi Principal Bench, New Delhi**

Corporate Debtor: **M/s Tirupati Inks Limited**

Financial Creditor: **ICICI Bank Limited**

Amount of Debt: **Rs. 26.95 Crores Approx**

Date of Order: **12-09-2018**

Relevant Section: **Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016- Initiation of Corporate Insolvency resolution process by Financial Creditor**

- ❖ Application was filed by the financial creditor for initiation of Corporate Insolvency Resolution Process against Corporate Debtor.
- ❖ Interim Resolution Professional appointed was Mr. Mukesh Mohan till his resignation from the post of resolution professional. Then Mr. Lekh Raj Bajaj was appointed as the resolution professional.
- ❖ One of the objections raised by the corporate debtor against the admission of the application for initiating the corporate insolvency process was that whether the applicant has been able to satisfy the requirement of section 7 of the Code. As, according to explanation in section 7(1) of the code an application by the financial creditor either on its own behalf or jointly with the other financial creditor would be competent for initiating corporate insolvency resolution process against a corporate debtor before the tribunal when a default has occurred. As a part of consortium of bank, the applicant was competent to file the application on its own behalf and also on behalf of other banks who are members of the consortium.
- ❖ According to the decision of the committee of creditors the invitation was made for the submission of resolution plan in respect of corporate debtor.
- ❖ Extension was taken for further period of 90 days after the expiry of 180 days of the corporate insolvency resolution process.
- ❖ But since no resolution plans were received the decision was then taken in the Committee of creditors with majority vote of 79.65% of voting share to liquidate the corporate debtor due to non-receipt of any resolution plan.
- ❖ Order was passed to liquidate corporate debtor – M/s Tirupati Inks Limited and appoint resolution professional as the liquidator for the liquidation.



Bench: **National Company Law Tribunal New Delhi Bench, New Delhi**

Corporate Debtor: **P.K Sales Company Private Limited**

Financial Creditor: **Karnataka Bank and others**

Amount of Debt: **Rs. 41.82 Crore Approx**

Date of Order: **13-09-2018**

Relevant Section: **Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016- Initiation of Corporate Insolvency resolution process by Corporate Applicant**

- ❖ Corporate insolvency resolution process was initiated against Corporate Debtor by the corporate applicant itself on account of default in payment.
- ❖ Interim Resolution Professional appointed was Mr. Subhash Chand Agarwal. He was later appointed as the resolution professional.
- ❖ One of the Financial Creditor raised an objection that the CIRP application cannot be allowed during any pendency of the proceedings under the provisions of SARFEASI Act, which was later rejected by the Hon'ble Court NCLAT in a view that overriding effect has been given by the provisions of section 238 of the Code and that there is no bar on the cases initiated under SARFEASI Act to be initiated in Insolvency proceedings under the Code.
- ❖ Committee of creditors took a decision to file application to pass an order of liquidation.
- ❖ Order was passed to liquidate corporate debtor and appoint resolution professional as the liquidator.

Bench: **National Company Law Tribunal Kolkata Bench, Kolkata**


Corporate Debtor: **Shree Ganesh Jewellery House (I) Limited**

Financial Creditor: **Abhishek Stock Broking Services Private Limited and others**

Date of Order: **14-09-2018**

Relevant Section: **Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016- Initiation of Corporate Insolvency resolution process by Financial Creditor**

- ❖ Application was filed by the financial creditor for initiation of Corporate Insolvency Resolution Process against Corporate Debtor.
- ❖ Interim Resolution Professional appointed was Mr. Manish Jain later he was replaced by committee of creditors by Mr. Anup Kumar Jain Expression of Interest was invited for submission of resolution plan by the resolution professional.
- ❖ In view of the factual background resolution professional could not carry out the responsibility as provided in the regulations and the Code and because of the reasons beyond the control of the resolution professional, he could not prepare Information Memorandum within two weeks of the date of appointment of Resolution professional.

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- ❖ Corporate insolvency resolution process period extension for 90 days beyond 180 days failed because of not getting more than 14% voting share in favour of the resolution moved by the resolution professional.
 - ❖ Committee of creditors then decided to file application for the liquidation of the corporate debtor.
 - ❖ Order was passed to liquidate corporate debtor and appoint resolution professional as the liquidator.

Bench: **National Company Law Tribunal Single Bench, Chennai**

Corporate Debtor: **Malabar Hotels Private Limited**

Financial Creditor: **Bharat Kumar Dugar**

Date of Order: **17-09-2018**

Relevant Section: **Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016-
Initiation of Corporate Insolvency resolution process by Operational Creditor**

- ❖ Application was filed by the operational creditor for initiation of Corporate Insolvency Resolution Process against Corporate Debtor.
- ❖ Interim Resolution Professional appointed was Mr. Venkataramanro Nagrajan He was later appointed as the resolution professional.
- ❖ Public announcement as required under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was made by the applicant for the purpose of inviting claims.
- ❖ Corporate insolvency resolution process also extended time to time.
- ❖ In the last meeting of committee of creditors resolution plan presented by Mr. Sarang Kale was unanimously approved out of all the resolution plans presented by the resolution applicants.
- ❖ The Hon'ble Tribunal approved the resolution plan submitted by Mr. Sarang Sudhakar Kale for the corporate debtor.
- ❖ Resolution applicant were directed to adhere to the provisions of section 53 of the IBC, 2016 duly following the procedure for "waterfall" in relation to the amounts brought in by the resolution applicants.
- ❖ Tribunal observed that as per section 14 of the IBC, 2016 the moratorium shall cease to have effect from the date of approval of the resolution plan.
- ❖ Also, as per section 31(3)(b) the resolution professional was directed to forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.



Bench: **National Company Law Tribunal Kolkata Bench, Kolkata**

Corporate Debtor: **Snowblue Trexim Private Limited**

Financial Creditor: **Badjate Stock & Shares Private Limited**

Amount of Debt: **Rs. 4.72 Crore Approx**

Date of Order: **26-09-2018**

Relevant Section: **Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016- Initiation of Corporate Insolvency resolution process by Operational Creditor**

- ❖ Application was filed by the operational creditor for initiation of Corporate Insolvency Resolution Process against Corporate Debtor.
- ❖ Mr. Manish M Jaju was appointed as the Interim resolution professional and was later appointed as the resolution professional.
- ❖ Resolution professional failed to find resolution applicant as he couldn't invite any resolution plan because of the reason of non-cooperation on the side of the corporate debtor in handling over the requisite information and documents which has necessitated for preparation of information memorandum.
- ❖ Extension was taken beyond 180 days for completion of resolution process and since no resolution plan under section 31 of the Code was able to be finalise, resolution professional recommended liquidation of corporate debtor, and committee of creditors unanimously decided to liquidate corporate debtor.
- ❖ Order was passed to liquidate corporate debtor and appoint resolution professional as the liquidator.

Bench: **National Company Law Tribunal Kolkata Bench, Kolkata**

Corporate Debtor: **Dooteriah & Kalej Valley Tea Estate Private Limited**


Financial Creditor: **Goutam Kumar Roy**

Amount of Debt: **Rs. 36.50 Lakhs Approx**

Date of Order: **26-09-2018**

Relevant Section: **Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016- Initiation of Corporate Insolvency resolution process by Operational Creditor**

- ❖ Application was filed by the operational creditor for initiation of Corporate Insolvency Resolution Process against Corporate Debtor.
- ❖ Interim Resolution Professional appointed was Mr. Chhedi Rajbhar
- ❖ Resolution professional appointed was Mr. Surendra Kumar Agarwal. Later, he resigned from the post of resolution professional and Mr. Samya Sengupta was appointed as the resolution professional.
- ❖ Two registered valuers were appointed by the applicant to prepare the valuation report and also invited Expression of Interest.

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- ❖ Only, one resolution plan was submitted by the resolution applicant namely, Fortune Chemicals Limited which was approved by the committee of creditors as the resolution applicant was eligible under section 29A of Insolvency and bankruptcy code to submit resolution plan
 - ❖ After looking into the resolution plan in detail it was observed that priority of the payment to the workman had been overlooked, resolution professional directed resolution applicant to modify the resolution plan.
 - ❖ Modified resolution plan was later submitted and got approved by 100% voting share in committee of creditors as it was in compliance with the provisions of I & B code.
 - ❖ Order was passed for the revival of the company in accordance with the approved resolution plan.

Bench: National Company Law Tribunal Mumbai Bench, Mumbai

Corporate Debtor: Nandkishore Steel Industries Private Limited

Date of Order: 27-09-2018

Relevant Section: Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016- Initiation of Corporate Insolvency resolution process by Corporate Applicant

- ❖ Admission order was passed by the Adjudicating authority for initiating corporate insolvency resolution process by the corporate applicant itself wherein moratorium was declared.
- ❖ Interim Resolution Professional appointed was Mr. Charudutt Marathe, later Mr. Amit Chandrashekar Poddar was appointed as the resolution professional.
- ❖ Two registered valuers were appointed to prepare the valuation report and also invited Expression of Interest but no Expression of Interest for the resolution plan was received.
- ❖ Committee of creditors by 100% voting passed the resolution to get an order for liquidation and appoint the applicant resolution professional as the liquidator
- ❖ Order was passed to liquidate Nandkishore Steel Industries Private Limited



Bench: **National Company Law Tribunal Chandigarh Bench, Chandigarh**

Corporate Debtor: **Rajpur Hydro Power Private Limited**

Financial Creditor: **Seashells Infrastructures Private Limited**

Amount of Debt: **Rs. 35.42 crores Approx**

Date of Order: **27-09-2018**

Relevant Section: **Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016- Initiation of Corporate Insolvency resolution process by Financial Creditor**

- ❖ Application was filed by the financial creditor for initiation of Corporate Insolvency Resolution Process against Corporate Debtor.
- ❖ Interim Resolution Professional appointed was Mr. Gurvinder Singh Sarin. Later Shri Sanjay Kumar Dewani was appointed as the resolution professional.
- ❖ Extension was taken beyond 180 days for completion of resolution process.
- ❖ Expression of Interest was invited for submission of resolution plan by the resolution professional and two registered valuers were appointed to prepare the valuation report.
- ❖ It was stated that minimum eligibility criteria for the resolution applicant was fixed in the committee of creditors meeting and expression of interest was received from eight applicants out of which two applicants submitted resolution plan after being eligible under section 29A, however committee of creditors rejected both the plans as they were offering low amount towards due payments of financial creditors/others.
- ❖ Further public announcement was made for inviting resolution plans under section 25 (2)(h) of the code, and expression of interest was received from 8 parties out of which after meeting the eligibility criteria, only three resolution plans were received.
- ❖ Committee of creditors by 100% voting share agreed for the approval of the resolution plan submitted by Dolphin Energy Enterprises.
- ❖ It was also certified that the content of the resolution plan of Dolphin Energy Enterprises meets the requirements of the Code and the rules and regulations made thereunder.



POLICY ACTUALIZAR



INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (MODEL BYE-LAWS AND GOVERNING BOARD OF INSOLVENCY PROFESSIONAL AGENCIES) (AMENDMENT) REGULATIONS, 2018

Regulation 5- Composition of the Governing Board:

The Governing Board shall consist of-

- (a) managing director
- (b) independent directors and
- (c) shareholder directors

Provided that the Governing Board shall have minimum seven directors.

The managing director shall not be considered either an independent director or a shareholder director.

Any employee of an insolvency professional agency may be appointed as a director on its Governing Board in addition to the managing director, but such director shall be deemed to be a shareholder director.

More than half of the directors shall be persons resident in India at the time of their appointment, and at all times during their tenure as directors.

The number of independent directors shall not be less than the number of shareholder directors: Provided that no meeting of the Governing Board shall be held without the presence of at least one independent director.

An independent director shall be an individual- (a) who is a person of ability and integrity; (b) who has expertise in the field of finance, law, management or insolvency; (c) who is not an insolvency professional; (d) who is not a relative of the directors of the Governing Board; (e) who had or has no pecuniary relationship with the insolvency professional agency, or any of its directors, or any of its shareholders holding more than ten per cent. of its share capital, during the immediately preceding two financial years or during the current financial year; (f) who is not a shareholder of the insolvency professional agency; (g) who is not a member of the Board of Directors of any of the shareholders holding more than ten per cent. of the share capital of the insolvency professional agency

An independent director shall be nominated by the Board from amongst the list of names proposed by the insolvency professional agency.

An individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy years, whichever is earlier.

The second term referred to in sub-regulation (8) may be subject to a satisfactory performance review of the first term by the Governing Board.

A cooling off period of three years shall be applicable for an independent director to

become a shareholder director in the same or another insolvency professional agency.

Not more than one fourth of the directors shall be insolvency professionals.

The directors shall elect an independent director as the Chairperson of the Governing Board.

A director, who has, any interest, direct or indirect, pecuniary or otherwise, in any matter coming up for consideration at a meeting of the Governing Board or any of its Committees, shall as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Governing Board or the Committee, as the case may be, and the director shall not take part in any deliberation or decision of the Governing Board or the Committee with respect to that matter.

Regulation 5A- Managing director

(1) An insolvency professional agency shall, subject to the guidelines issued by the Board from time to time, determine the qualification and experience, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the selection and appointment of the managing director, subject to the condition that-

(a) an individual shall be selected as managing director through an open advertisement in all editions of at least one national daily newspaper

(b) an individual at the time joining as managing director shall not be above the age of fifty-five years, which may be

relaxed by the Governing Board up to sixty years, after recording reasons therefore and

(c) an individual shall not serve as managing director after he attains the age of sixty-five years.

The appointment of an individual as the managing director shall be for a tenure of not less than three years but not exceeding five years.

An individual may serve as managing director for a maximum of two terms.

The process of appointment for the second term of an individual as managing director shall be conducted afresh.

The appointment and remuneration payable to the managing director shall be approved by a compensation committee constituted by the Governing Board.

The appointment, renewal of appointment and termination of service of the managing director shall be subject to prior approval of the Board.

The managing director shall be liable for removal or termination of services by the Governing Board, with the prior approval of the Board, for failure to give effect to the directions, guidelines and other orders issued by the Governing Board or the Board, or the rules, the articles of association or bye-laws of the insolvency professional agency or on the ground of misconduct or incapacity to continue in office.

The Board may suo motu remove or terminate the services of the managing director, if it deems fit, in the interest of stakeholders of the insolvency resolution process or in the public interest, after

giving a reasonable opportunity of being heard.

The managing director shall be an ex-officio member of Membership Committee, Monitoring Committee, Grievance Redressal Committee and Disciplinary Committee.

Regulation 5B.- Compliance

Every insolvency professional agency registered as on the date of commencement of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2018, shall comply with regulations 5 and 5A within one year from the date of such commencement.

THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY PROFESSIONALS) REGULATIONS, 2016

An insolvency professional shall pay to the Board, a fee calculated at the rate of 0.25 percent of the professional fee earned for the services rendered by him as an insolvency professional in the preceding financial year, on or before the 30th of April every year

An eligible person seeking recognition as an insolvency professional entity shall pay an application fee of fifty thousand rupees along with the application for recognition

An insolvency professional entity shall pay to the Board, a fee calculated at the rate of 0.25 percent of the turnover from the services rendered by it in the preceding financial year, on or before the 30th of April every year

An insolvency professional entity shall inform the Board, within seven days, when an individual ceases or joins as its director or partner, as the case may be, along with a fee of two thousand rupees

A delay in payment of fee by an insolvency professional or an insolvency professional entity will attract a simple interest at the rate of 12 percent per annum on the amount of fee unpaid, without prejudice to any other action which the Board may take as deemed fit under the Code or any regulations made thereunder.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY PROFESSIONAL AGENCIES) (AMENDMENT) REGULATIONS, 2018

Regulation 3- Eligibility for registration

In addition to existing eligibility criteria following has been added:

No person shall at any time, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than five per cent. of the paid-up equity share capital in an insolvency professional agency: Provided that-

- (i) a stock exchange
- (ii) a depository
- (iii) a banking company
- (iv) an insurance company
- (v) a public financial institution and
- (vi) a multilateral financial institution,

may, acquire or hold, directly or indirectly, either individually or together with persons acting in concert, up to fifteen per cent. of the paid-up equity share capital of an insolvency professional agency: Provided further that-

- (i) the Central Government
- (ii) a State Government and

(iii) a statutory regulator,

may, acquire or hold, directly or indirectly, up to hundred per cent. of the paid-up equity share capital of an insolvency professional agency.

In the principal regulations, in the Schedule, in Annexure to Form A, in Part III, - (a) in clause 8, for “10%”, “5%” shall be substituted; (b) in clause 13, for “10%”, “5%” shall be substituted.

THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (LIQUIDATION PROCESS) (SECOND AMENDMENT) REGULATIONS, 2018

Regulation 32- Manner of Sale

The liquidator may sell-

- (a) an asset on a standalone basis
- (b) the assets in a slump sale
- (c) a set of assets collectively
- (d) the assets in parcels
- (e) the corporate debtor as a going concern or
- (f) the business(s) of the corporate debtor as a going concern

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.

Regulation 35- Valuation of assets or business intended to be sold

Where the valuation has been conducted under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or regulation 34 of the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process

for Corporate Persons) Regulations, 2017, as the case may be, the liquidator shall consider the average of the estimates of the values arrived under those provisions for the purposes of valuations under these regulations.

In cases not covered under sub-regulation (1), the liquidator shall within seven days of the liquidation commencement date, appoint two registered valuers to determine the realisable value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor

Provided that the following persons shall not be appointed as registered valuers, namely:- (a) a relative of the liquidator; (b) a related party of the corporate debtor; (c) an auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or (d) a partner or director of the insolvency professional entity of which the liquidator is a partner or director.

The Registered Valuers appointed under sub-regulation (2) shall independently submit to the liquidator the estimates of realisable value of the assets or businesses, as the case may be, computed in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017, after physical verification of the assets of the corporate debtor.

The average of two estimates received under sub-regulation (3) shall be taken as the value of the assets or businesses.

In the principal regulations, in Schedule II, Form B has been substituted.